

Use of Lasers, Dermabrators, Botox and Other Treatments by Non-Physicians

During the past few years, the Board has received an increase in calls inquiring about who may perform what type of cosmetic procedure and where. There is a particular interest in those elective cosmetic procedures that are becoming very popular with our appearance-oriented population, especially baby-boomers concerned with the signs of aging. Physicians call to find out who they may hire so that they may expand their practice to capture this market, and non-physicians call to find out if they might be allowed to profit by performing various treatments. The Board believed that it might be helpful to share some of these questions and our responses with our readers.

Who may use lasers or intense pulse light devices to remove hair, spider veins and tattoos?

Physicians may use lasers or intense pulse light devices. In addition, physician assistants and registered nurses (not licensed vocational nurses) may perform these treatments under a physician's supervision. Unlicensed medical assistants, licensed vocational nurses, cosmetologists, electrologists or estheticians may not legally perform these treatments under any circumstance, nor may registered nurses or physician assistants perform them independently, without supervision.

Who may inject Botox?

Physicians may inject Botox, or they may direct licensed registered nurses, licensed vocational nurses, or physician assistants to perform the injection under their supervision. No unlicensed persons, such as medical assistants, may inject Botox.

I've been approached by a nurse to be her "sponsoring physician," for her laser and Botox practice; would that be legal?

No. There is no such thing as a "sponsoring physician." Nurses may not, under California law, employ or contract with a physician for supervision. A nurse may not have a private practice with no actual supervision. While the laws governing nursing recognize "the existence of overlapping functions between physicians and registered nurses" and permit "additional sharing of functions within organized health care systems that provide for collaboration between physicians and registered nurses" (Business and Professions Code section 2725), nurses may only perform medical functions under "standardized procedures." The Board does not believe this allows a nurse to have a private medical cosmetic practice without any physician supervision.

I see these ads for "Botox Parties" and think that it has to be illegal. Is it?

The law does not restrict where Botox treatments may be performed, as long as they are performed by a physician, a

registered nurse, licensed vocational nurses, or physician assistant *under a physician's supervision*.

Who may perform microdermabrasion?

It depends. If it's a cosmetic treatment, that is to say it only affects the outermost layer of the skin or the stratum corneum, then a licensed cosmetician or esthetician may perform the treatment. If it's a medical treatment, that is to say it penetrates to deeper levels of the epidermis, then it must be performed by a physician, or by a registered nurse or physician assistant under supervision. Treatments to remove scarring, blemishes, or wrinkles would be considered a medical treatment. Unlicensed personnel, including medical assistants, may not perform any type of microdermabrasion.

I would like to provide nonmedical dermabrasion, and hire an esthetician to perform that and also cosmetic facial and skin treatments. What do I need to do?

It is legal for physicians to hire licensed cosmetologists or estheticians to perform cosmetology services, if they have obtained a facility permit from the Bureau of Barbering and Cosmetology. You may apply for a permit with the Department of Consumer Affairs, Bureau of Barbering and Cosmetology, 400 R Street, Suite 5100, Sacramento, CA 95814. You may obtain application forms at the DCA Web site at www.dca.ca.gov. All licensed cosmetologists, including estheticians, must perform their services in a facility with a permit.

Why can't I use a medical assistant instead of a nurse?

Medical assistants are not licensed professionals. While doctors have become accustomed to their assistance in medical office practices, they are not required to have any degree, nor do they have to pass an examination or be licensed. For that reason, the law only allows them to perform technical supportive services as described in sections 2069-2071 of the Business and Professions Code, and Title 16 California Code of Regulations, sections 1366-1366.4.

What is the penalty if I get caught using an unlicensed person to perform medical treatment?

The law provides a number of sanctions, ranging from license discipline to criminal prosecution, for aiding and abetting the unlicensed practice of medicine. Physicians could be charged with aiding and abetting unlicensed practice, and the employee could be charged with unlicensed practice.

I understand that all of these practices may be illegal, but I see advertisements all of the time for these kinds of illegal practices. What should I do?

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Consider a Diversion Program Committee or Group Facilitator Position

The Physician Diversion Program is a statewide, highly structured, multifaceted, five-year monitoring and rehabilitation program. The program's mission is to protect the public by supporting and monitoring the recovery of physicians who suffer from substance-abuse and mental-health-related disorders. The Medical Board of California's Diversion Committee, a standing committee within the Board's Division of Medical Quality, oversees the program.

The monitoring resources used by the program contribute in a collective role to essentially function as a rehabilitation team that oversees the progress of the impaired physician's participation in the program. The program is expanding. Qualified persons are needed to serve as members of the program's Diversion Evaluation Committees as well as group facilitators.

Diversion Evaluation Committee Members, Alternates

Diversion Evaluation Committees (DECs) are used by the program to determine the appropriateness of impaired physicians for participation, terms of participation and successful completion or termination of impaired physicians from the program. DEC members are volunteers but receive per diem and reimbursement or travel and other expenses necessarily incurred in the performance of their official duties.

Members may be California-licensed physicians, public members or former participants of a professional monitoring program. Physician members must possess a current, unrestricted medical license in good standing with no current pending accusation by the Board. Public members must possess a current, unrestricted license from the Board of Behavioral Sciences, the Board of Psychology or be certified as an alcohol and drug counselor or specialist. Candidates who are former participants in either California's Diversion Program or any other impaired professionals monitoring program must have successfully completed the program at least two years prior to

appointment to a DEC as well as have achieved a minimum of five years of uninterrupted recovery.

DEC members may serve two consecutive four-year terms with additional terms allowed after a four-year break between appointments. DEC members are needed for standing committees. Members are also needed to serve routinely as alternates in emergency situations, such as special DEC meetings or to attend for standing members unable to attend a particular meeting, etc. If you are interested in serving as a DEC member, please send your letter of interest along with a current CV to Elsa Paynes at the address listed below or for more information, please telephone (916) 263-1144.

Medical Board of California
Physician Diversion Program

1420 Howe Avenue, Suite 14, Sacramento, CA 95825
Telephone: (916) 263-2600 Fax: (916) 263-2607

Group Facilitators

Participants in the Diversion Program attend Diversion Group meetings facilitated by group facilitators on a twice-weekly basis. Currently, Diversion group meetings are conducted in 16 locations throughout the state. Diversion facilitators contract with, and are paid directly by, the participants. The current rates approved by the program to be paid by participants are \$220 per month for attendance at one meeting per week and \$315 per month for twice-weekly meetings. This includes the cost of the group facilitator's participation in consultations, report writing and attendance at DEC meetings. A group facilitator must be certified as a drug and alcohol counselor in addition to being licensed as an MFT, LCSW, psychologist or physician who specializes in psychiatry. If you, or someone you know, would be interested in becoming a group facilitator for the Diversion Program and would like more information, please contact Paige Oliver at (916) 263-2604.

Treatments by Non-Physicians

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You may file a complaint with the Medical Board. To do so, please send the advertisement and address or telephone number where you may be reached for further information to our Central Complaint Unit at 1426 Howe Avenue, Suite 93, Sacramento, CA 95825. The Medical Board will contact the business, in writing, inform them of the law and direct them to cease any illegal practice. If it is simply the advertisement that is misleading, they will be directed to change or clarify the ad.

It is impossible to cover all of the relevant legal issues in a short article, and these questions and answers are not a

substitute for professional legal advice. Physicians may want to consult with their attorneys or malpractice carriers if there is any question about the use of their office personnel. In addition, the Board has a number of written materials with more thorough information on this subject. There are legal opinions on the use of lasers and dermabrasion, materials outlining the legal limitations on use of medical assistants, as well as the actual statutes and regulations. To request any of these documents, please contact:

Medical Board of California
1426 Howe Avenue, Suite 92
Sacramento, CA 95825
(916) 263-2389